

Macomb Contracting Corp. and Matthew Johnson.
Case 7-CA-34199

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by Matthew Johnson, an Individual, on March 31, 1993, the General Counsel of the National Labor Relations Board issued a complaint against Macomb Contracting Corp., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On June 14, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On June 16, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 19, 1993, notified the Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed. Although the Respondent requested and was granted an extension of time within which to answer the complaint, no answer was thereafter filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Clinton Township, Michigan, is engaged in road building. During the calendar year 1992, the Respondent purchased and received goods valued in excess of \$50,000 from other enterprises located within the State of Michigan, each of which other enterprises had received these goods directly from points outside the State of Michigan. During calendar year 1992, the Respondent performed services valued in excess of \$50,000 for the State of Michigan,

or for political subdivisions thereof. During the same time period, the State of Michigan received in excess of \$50,000 for such road building from the Federal Government. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 324, International Union of Operating Engineers, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On about November 1, 1992, the Respondent held out the possibility of employee promotion if employees refrained from calling the Union's attention to the Respondent's asserted contract violation regarding employee fringe benefits.

On about November 12, 1992, the Respondent told employees that they were not being recalled to work because of employee discussions with the Union about employee benefits.

Since on about November 12, 1992, and continuing to date, the Respondent has failed and refused to recall Matthew Johnson, an employee, to work because he had discussed contractual employee benefits and the Respondent's contributions for these benefits with the Union.

CONCLUSIONS OF LAW

1. By holding out the possibility of employee promotion if employees refrained from calling the Union's attention to the Respondent's asserted contract violation regarding employee benefits and by telling employees that they were not being recalled to work because of employee discussions with the Union about employee benefits, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, thereby engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By failing and refusing to recall its employee Matthew Johnson because he discussed contractual benefits with the Union, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization and has thus engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order that the Respondent offer imme-

diate and full reinstatement to Matthew Johnson to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights and privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with backpay to be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful refusal to recall, and to notify Matthew Johnson in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Macomb Contracting Corp., Clinton Township, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Holding out the possibility of employee promotion if employees refrained from calling the Union's attention to the Respondent's asserted contract violation regarding employee fringe benefits.

(b) Telling employees that they were not being recalled to work because of employee discussions with the Union about employee benefits.

(c) Failing and refusing to recall its employee Matthew Johnson because he had discussed contractual employee benefits and the Respondent's contributions for these benefits with the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Matthew Johnson immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings or other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(b) Expunge from its files any and all references to the unlawful refusal to recall Matthew Johnson and notify him in writing that this has been done.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Clinton Township, Michigan, copies of the attached notice marked "Appen-

dix."¹ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 21, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT hold out the possibility of employee promotion if employees refrain from calling the Union's (Local 324, International Union of Operating Engineers, AFL-CIO) attention to our asserted contract violations regarding employee fringe benefits.

WE WILL NOT tell employees that they are not being recalled to work because of employee discussions with the Union about employee benefits.

WE WILL NOT fail and refuse to recall our employee Matthew Johnson because he had discussed contractual employee benefits and our contributions for these benefits with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Matthew Johnson immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL notify Matthew Johnson that we have removed from our files any reference to our refusal to recall him and that we will not use the refusal to recall him against him in any way.

MACOMB CONTRACTING CORP.